PATENT AND ACCESSING TO ESSENTIAL MEDICINE OF THAI POPULATION : THE CASE STUDY OF MARIJUANA

CHUENCHEEWIN YIMFUANG

Faculty of Humanities and Social Sciences Suan Sunandha Rajabhat University
E-mail: chuencheewin.yi@ssru.ac.th

Abstract - In the research regarding the provision of protecting patents related to marijuana extract and medicines produced from marijuana extracts to allow Thai people accessing to quality and efficiency medicine as well as raising the level of public health in Thailand and upgrade the quality and standard of living of Thai people. The purposes of this research are 1. To study the concepts, theories and legal principles regarding drug patents and marijuana possession, and 2. To suggest the guideline to improve and develop laws regarding patents and the production and possession of marijuana for pharmaceutical production through the use of the qualitative research methodology. The data is collected by collecting relevant documentary research. The results presented that the production, import or export of marijuana, except in cases of necessity for the benefit of the civil service, medical treatment of patients or research and development, including agriculture, commerce, science or industry, shall be for the medical benefits. However, the patent registration for marijuana extract or medicine produced from the marijuana extract is still rejected, so it does not provide the opportunity to Thais to access the marijuana extract-made medicines. Hence, the Patent Act B.E. 2522 (1979) should provide protection to medicines produced from marijuana extracts to be consistent with the permission to cultivate, produce, import or export marijuana for the benefit of the government, medical, patients treatment or research and development to provide opportunities for Thais to access to quality and effective medicine to relief pain and increase the efficiency of public health in Thailand as well as to upgrade the quality and standard of living of Thai people.

Keywords - Patent, Accessing to essential medicines, Marijuana

I. INTRODUCTION

Marijuana plant is from the Cannabaceae, which originated in Central Asia, and it can be seen in many places. Cannabis is called simply as Marijuana, Ganja or Indian Hemp, and it has a scientific name as Marijuana sativa L. subsp. Indica, or Gancha (ChanchaiAuachaikun, Online Search). The Narcotics Act (No. 7), B.E. 2562 stipulated that has many medical properties, especially reducing nausea and vomiting from receiving chemotherapy, and increasing appetite in patients with cancer and AIDS, reducing sudden pain and chronic, reducing nerve degeneration, helping control seizures, reducing the pressure in the eyes of glaucoma patients, preventing and providing treatment of vCJD, reducing anxiety and curing cancer by being able to resist the growth of various cancer cells (PhakthipRuenruengruengsak, 2019. However, misusage of marijuana; for instances, taking marijuana will have sedative effect, causing the addicts to have symptoms like drunkenness, weakness, lethargy and psychedelic sleepiness, illusions ears, paranoid thoughts, confused and uncontrollable. Some drug users may lose memory as marijuana causes brain and memory damage, confusion and anxiety. In addition, marijuana has the physical effect towards the drug user. If it is consumed in large quantity for a long time, it will cause damages to the body until it is abnormal, especially for those who work in the jobs that required thought, decision making, and physical labor. Substances in marijuana will destroy the system of many organs in the body, particularly to the body's immune system, weak body, and get various diseases easily, such as chronic bronchitis, weight loss, and lung cancer. If it is taken for a long time, people often have marijuana addiction. When the body lacks medication, it causes mental disorders such as restlessness, insomnia, anxiety, fatigue, etc. (Medthai, 2017). Therefore, marijuana is classified as narcotics in category 5,, which has a total of 4 legal penalties.

For those who manufacture or import marijuana, the law stipulated a prison to be sentenced for 2-15 years and a fine for 200,000 - 1,500,000 baht. The offense of possession of marijuana for sale, if less than 10 kilograms, they shall be punished as imprisonment for 2-10 years or a fine of 40,000 - 200,000 baht, but if it is more than 10 kilograms or above, they shall be in prison for 2-15 years and a fine of 200,000 - 1,500,000 baht, or both fine and sentence. For the offense of possession (Not for sale), the law stipulated as an imprisonment not exceeding 5 years, or fine for not exceeding 100,000 baht, or both. But, if in possession of more than 10 kilograms, it shall be considered possession for sale. For the offense of taking marijuana, the law stipulated as imprisonment for no more than 1 year or a fine of no more than 20,000 baht or both (Office of the Narcotics Control Board, 2018).

With the above reasons, marijuana is not allowed to grow, produce and distribute in Thailand. Later, the Thai government has granted the permission to grow, produce and use medical. The Narcotics Drug Act (No. 7) B.E. 2562 and the announcement of the Ministry of Public Health, Re: Notification of possession of marijuana for persons qualified under Section 26/5 and other persons who are not patients

under Section 22 (2) before the Narcotics Act (No. 7) B.E. 2562 was prescribed shall not be punished. The Act B.E. 2562 also controls the quantity of possession and the types of people who can grow and produce marijuana in a narrow and limited way, so it does not provide the opportunity for the Thai people in conducting the research and production of drugs made from marijuana for medical use. In addition, medicines manufactured from marijuana extracts cannot be registered and requested for protection under the Patent Act B.E. 2522, since the Act provides protection for pharmaceutical products as a new invention and is an invention which has a higher level of invention and can be applied in the industry. On the other hand, the law does not protect microbes and any components of microbes that exist naturally, animals, plants or extracts from animals or plants, method of diagnosis, treatment, or treatment of human or animal disease, inventions that are contrary to public order, good morals, or the welfare of the people. As marijuana is classified as a substance to be harmful, the products made from marijuana or having marijuana extracts in the process cannot be registered as patents and be protected for intellectual property. As a result, drugs produced from marijuana are not allowed to be produced and distributed in Thailand. There is a problem with the drug shortage or inadequate to meet demand, and Thai people do not have access to medicines that contain precursors from marijuana.

The objective of this research is to study the rules, concepts, theories and legal measures to control the cultivation, production, distribution and consumption of marijuana to analyze the advantages and disadvantages of various laws relating to the production and distribution of medicines produced from marijuana as well as the dosage of the said drug compared to the demand for medication, including suggesting guideline to amend the law to promote the access to medicines which is a fundamental right and further enhances the quality of life of the Thai people.

II. RESEARCH OBJECTIVES

1. To study the concepts, theories, and legal principles regarding drug patents and marijuana possession.
2. To suggest a guideline to improve and develop laws regarding patents and the production and possession of marijuana for the production of medicines.

III. SCOPE OF THE RESEARCH

This research focuses on studying and analyzing laws regarding legal measures under the Patent Act 1979, the Narcotics Act (No. 7) B.E. 2562, the Notification of the Ministry of Public Health, regarding the notification of possession of marijuana for those who have the qualifications under Section 26/5 and other persons who are not patients under Section 22 (2) before the Narcotics Act (No. 7) B.E. 2522 is effective shall not be punished in 2019 and other related laws. This is also to study the evolution of laws regarding drug patents and the production of marijuana possession both in Thailand and abroad as well as interpretation and enforcement of laws regarding drug patents and the production of marijuana possession, comparative analysis of drug patents and the production of marijuana possession 2007, and other relevant laws and international law to find ways to promote the use of marijuana for medical use, production of medicines, and research as well as those who are responsible for controlling possession of marijuana production and drugs obtained from marijuana.

IV. EXPECTED BENEFITS

1. To acknowledge the concepts, theories, and legal principles regarding drug patents and marijuana possession.
2. To be able to suggest guideline to improve and develop laws regarding patents and the production and possession of marijuana for the production of medicines.

V. RESEARCH METHODOLOGY

This research is a qualitative research using the method of compiling the relevant legal documents. Thai and foreign documents are used for the countries that use Civil Law System and Common Law System. Thus, it is to find the appropriate criteria and standards to be applied to Thai law by using the qualitative research, and the research is carried out according to the nature of data collection by using documentary research.

Documentary Research

It is by studying and collecting relevant data such as laws, regulations, rules, judgments of the court, court's consideration, textbooks, journals, articles, research papers, dissertations, writings, meeting notes, meeting minutes, meeting documentations, including draft of laws and other documents published on the Internet. Thus, it is to build a knowledge on analysis, synthesis, and evaluation in the future.

Data collection

The researcher has collected data from many sources such as secondary data, and it is the data that has been analyzed or interpreted by other people. The important information which is relevant to this research can be classified as follows. Thai law such as the Constitution of Thailand, the Patent Act 1979, the Narcotics Act (No. 7) B.E. 2562, the Notification of the Ministry of Public Health, regarding the notification of possession of marijuana for those who

have the qualifications under Section 26/5 and other persons who are not patients under Section 22 (2) before the Narcotics Act (No. 7) B.E. 2522, Criminal Code, Civil and Commercial Code, Criminal Procedure Code, and Civil Procedure Code.
Judgment of the Thai court and the judgment of the foreign courts, including related academic articles such as textbooks, journals, articles, research reports, dissertations, writings, meeting notes, meeting minutes, meeting documents, and other documents published on the Internet.

Data Analysis
The researcher has integrated data from various academic articles by analyzing, synthesizing, and comparing under the guideline of qualitative data. It is a descriptive by using Content Analysis to summarize key points

VI. RESULTS AND DISCUSSION

According to the Narcotics Act B.E. 2522, marijuana and kratom are the 5 types of narcotics that prohibited from using or utilizing the treatment of patients or for medical use. Also, those who take or occupy shall be punished as well. On the other hand, the Narcotics Act 1979 was enforced for a long time and there are some provisions that are not keeping up with the current situation. In addition, research results showed that marijuana extracts and Kratom plants have many medical benefits, so many countries around the world have amended the law to allow people to use marijuana and Kratom for the benefit of treatment of diseases and medical benefits. Therefore, the Narcotics Act (No. 7) B.E. 2560 stipulated that no one shall produce, import or export of marijuana, except in cases of necessity for the benefit of the civil service, medical treatment of patients or research and development, including agriculture, commerce, or industry for the benefits on medical treatment. It is licensed by the licensor with the approval of the board in the case of bringing in or out of the Kingdom for not exceeding the amount required for personal treatment with a prescription or certificate of a medical professional, dental professional, or Thai traditional medicine practitioner as well as a professional practitioner of applied traditional Thai medicine or folk healers under the law on Thai traditional medicine profession who are treatment providers, can be done when receiving a license from those licensors. In this regard, practitioners of traditional Thai medicine and folk healers shall be in accordance with the rules, procedures and conditions announced by the Minister with the approval of the Committee (Narcotics Act (No. 7) B.E. 2562).
When the cultivation, production, import or export of marijuana for the benefit of the government, medical, patients or research and development are allowed, but medicines or extracts of marijuana do not yet have patent protection under Thai law, as the Patent Act, 1979, stipulated that the following inventions are not protected under the Act: Microbes and any part of the organisms that are naturally present, animals, plants or extracts from animals or plants, methods of diagnosis, treatment of diseases of humans or animals, invention contrary to public order or good morals, public health or civil welfare. Therefore, when marijuana extract is naturally present, not by invented or input into any processes as new products or any actions to improve the product or the process, marijuana is still considered to be prohibited by law and contrary to public order and good morals. Hence, Thailand does not allow the patenting of marijuana extracts or medicines that contain marijuana extracts.

VII. CONCLUSIONS

Although Thai law allows the cultivation, production, import or export of marijuana. for the benefit of the government, medical, patients or research and development, medicines or extracts of marijuana are not protected by patents under Thai law. Since marijuana extracts are naturally growth and marijuana is still considered to be prohibited by law and contrary to public order and good morals, the Department of Intellectual Property in Thailand has denied registration of marijuana extracts that companies in Thailand and foreign countries apply for patent registration. This is why drugs produced from marijuana extract or other marijuana extracts are not allowed to be produced, imported, exported and distributed in Thailand. When marijuana has many medical properties, especially reducing nausea and vomiting from receiving chemotherapy, and increasing appetite in patients with cancer and AIDS, reducing sudden pain and chronic, reducing nerve degeneration, helping control seizures, reducing the pressure in the eyes of glaucoma patients, preventing and providing treatment of vCJD, reducing anxiety and curing cancer by being able to resist the growth of various cancer cells (PhakthipRuenruengruengsak, 2019). The denial of patent registration on the marijuana extract or drugs produced from marijuana extracts would block the opportunity of Thai people to access to medicines made from marijuana extracts.

SUGGESTIONS

1. The Patent Act B.E. 2522 (1979) should provide protection to medicines produced from marijuana extracts, which is consistent with the permission to cultivate, produce, import or export marijuana extract for the benefit of the government, medical, patients or research and development to provide opportunities for Thai people to access to quality medicines efficiency to relieve pain and increase the efficiency of public health in Thailand as well as upgrading the quality and standard of living of Thai people.

2. The penalty should be adapted to be a new concept may be called "The proportion of the punishment in Proportionality of sentencing for drug offences as a guideline to adjust the penalties for drug offenders to promote and reduce the risk of people who want to produce, cultivate, import, export or medical research on marijuana (TanawatPisitchinda, 2016).

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